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RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CA. S.J.
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PAUL GORDON

Plaintiff,

vs.

TRANSPORTATION SECURITY
ADMINISTRATION; MICHAEL
CHERTOFF, SECRETARY, DEPARTMENT
OF HOMELAND SECURITY; AND DOES 1
TO 25, INCLUSIVE,

Defendants.

CASE NO. 07 02628

PVT

COMPLAINT FOR DAMAGES

1. DISABILITY DISCRIMINATION IN VIOLATION OF
SECTION 501 OF THE REHABILITATION ACT OF
1973

DEMAND FOR JURY TRIAL

COMPLAINT

Now comes PAUL GORDON, Plaintiff in this action, and files this Complaint, and further
alleges as follows:

PARTIES TO THE CIVIL ACTION

1. Plaintiff PAUL GORDON (hereinafter "Plaintiff") is a male adult natural person who
is and was at all times mentioned herein a resident of the State of California.

2. Plaintiff is informed and believes, and thereon alleges that Defendant,
TRANSPORTATION SECURITY ADMINISTRATION (TSA), is a Federal Governmental Agency.

1 3. Plaintiff is informed and believes, and thereon alleges that Defendant, Michael
2 Chertoff, Secretary, Department of Homeland Security, is an appropriate and required Defendant in
3 that he is the head of the governmental agency defendant, and a required named defendant pursuant
4 to Final Decision on the complaint of employment discrimination filed by Plaintiff with the
5 Department of Homeland Security.
6

7 4. Defendants Does 1 to 25 are business entities of unknown form who were the
8 employers of the Plaintiff and/or Defendant TSA, and are herein sued under fictitious names. Their
9 true names and capacities are unknown to Plaintiff.

10 5. Plaintiff is informed and believes and thereon alleges that there exists, and, at all
11 times relevant to this complaint, existed a unity of interests between certain of the Defendants such
12 that any individuality and separateness between these certain Defendants has ceased, and those
13 certain Defendants are the alter ego of the other certain Defendants and exerted control over each
14 other. Adherence to the fiction of the separate existence of these certain Defendants as an entity
15 distinct from other certain Defendants will permit an abuse of the corporate privilege and would
16 sanction fraud and /or promote injustice.
17

18 6. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned in
19 this Complaint, Defendants were the agents and employees of their co-Defendants, and in doing the
20 things alleged in this Complaint were acting within the course and scope of such agency and
21 employment and acted in such a manner as to ratify the conduct of their co-Defendants
22

23 Venue and Jurisdiction

24 7. Venue is proper because the actions and injuries giving rise to this Complaint took
25 place in the County of Santa Clara, California; and because Plaintiff is informed and believes and
26 thereon alleges that Defendants and each of them committed the acts alleged herein in the County of
27 Santa Clara, California.
28

1 8. At all relevant times herein Plaintiff was an individual suffering from a handicap
2 and/or disability as those terms are defined by the Rehabilitation Act of 1973 and the regulations
3 promulgated there under. Specifically, Plaintiff is a person who had one arm amputated above the
4 elbow. That defect substantially limits him in major life activities.

5 9. Subject matter in this action is properly heard in this Court, as the action incorporates
6 an amount in controversy as set forth in the complaint which exceeds \$75,000.00.
7

8 10. At all times mentioned herein, section 501 of the Rehabilitation Act of 1973, was in
9 full force and effect, and was binding upon Defendants.

10 11. Plaintiff is informed and believes and thereon alleges that Defendants are employers
11 subject to suit under the applicable laws.

12 12. Plaintiff has exhausted his administrative remedies by filing complaint number HS-
13 06-TSA-001629 with the Department of Homeland Security, and receiving a Final Decision. He has
14 therefore satisfied the administrative prerequisites for the bringing of this suit. Plaintiff brings this
15 suit within the time allowed by law.
16

17 **FACTS COMMON TO ALL CAUSES OF ACTION**

18 13. Plaintiff is a former employee of Defendants and/or Does 1-50 herein, and performed
19 all duties of the position of Security Screener from 2002 through August 2005 at the Los Angeles
20 International Airport. Each year, Plaintiff was required to, and did complete, physical agility testing.
21 At all times Plaintiff met the physical requirements set forth by the Department of Homeland
22 Security and the Transportation Security Administration as established by 49 U.S.C. section
23 44935(f). During this time, Plaintiff did not request, require or receive any accommodations in order
24 to perform the essential functions of his position as security screener.
25

26 14. In August, 2005, Plaintiff intended a transfer to the Modesto City-County Airport.
27 However, he was required to reapply for the position of Security Screener at the Modesto Airport.
28

1 15. Plaintiff applied for the position online, informing Defendants that he had only one
2 arm. His online application was subsequently accepted and he was offered the position subject to
3 required testing.

4 16. Plaintiff was required to travel to Modesto for a knowledge-based test. He did so,
5 completing the computerized test, and was informed that he had passed the test.
6

7 17. Thereafter he was asked to travel to San Jose to complete a Physical Agility Test and
8 a Medical Evaluation, such as he had taken as part of his prior employment as a security screener for
9 the TSA. Plaintiff took the physical agility test, and was informed that he had passed the test which
10 measures the ability to perform the functions of the position of security screener. He then proceeded
11 to the medical exam which also took place in San Jose, California, in the County of Santa Clara. As
12 he arrived to take the medical test, the facilitator looked at Plaintiff and immediately stated that
13 Plaintiff was disqualified from the position because he had an amputation of his arm.
14

15 18. Plaintiff protested, indicating that he had performed the very job he was applying for
16 3 years, and that he had passed the medical evaluation previously. He had done each of these things
17 after enactment of the ATSA and while he was a person with a disability, in that he had 1 arm that
18 had been amputated.
19

20 **FIRST CAUSE OF ACTION**
DISABILITY DISCRIMINATION IN VIOLATION OF THE REHAB ACT OF 1973
21 **(AS AGAINST DEFENDANTS, AND EACH OF THEM)**

22 19. By this reference, Plaintiff hereby incorporates each and every paragraph set forth
23 above as though fully set forth at this place.

24 20. During the relevant time period herein, Plaintiff was qualified to perform the position
25 of security screener, and in fact had done so for a number of years. A job opening at the Merced
26 Airport for the position of Security Screener was available. Plaintiff applied for the open position of
27 Security Screener, but was denied the position on the basis that he is a person with a disability.
28

21. Defendants and each of them violated the requirements of Section 501 of the Rehabilitation Act of 1973 by discriminating against Plaintiff on the basis of his disability.

22. At all times herein mentioned, Plaintiff was willing and able to perform the duties and functions of his position if Defendants, and each of them, had offered the position to him.

23. As a direct and proximate result of the unlawful conduct of Defendants and each of them, Plaintiff has suffered special damages including but not limited to past and future loss of income, benefits, and other damages to be proven at time of trial.

24. As a direct and proximate result of the unlawful conduct of Defendants and each of them, Plaintiff has suffered general damages including but not limited to shock, embarrassment, physical distress and injury, humiliation, emotional distress, stress and other damages to be proven at the time of trial.

25. As a result of the conduct of Defendants and each of them, Plaintiff was forced to retain an attorney in order to protect his rights. Accordingly, Plaintiff seeks the reasonable attorneys fees and costs incurred in this litigation in an amount according to proof at trial.

WHEREFORE, Plaintiff prays for judgment as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff makes the following demand:

As to the First Cause of Action set forth herein, Plaintiff prays:

- a) That process be issued and served as provided by law, requiring Defendants to appear and answer or face judgment;
- b) That Plaintiff has and recovers a judgment against Defendants in an amount to be determined at trial as general, special, actual, compensatory and/or nominal damages for their wrongful conduct.
- c) That Plaintiff have and recover a judgment against Defendants for punitive damages

1 in an amount to be determined at trial sufficient to punish, penalize and/or deter
2 Defendants;

- 3 d) That Plaintiff have and recover a judgment against Defendants in an amount to be
4 determined at trial for expenses of this litigation, including, but not limited to,
5 reasonable attorney's fees and costs;
6
7 e) That Plaintiff has and recovers a judgment against Defendants for all prejudgment
8 interest;
9
f) That Plaintiff has such other relief as this Court deems just and appropriate.

10 PLAINTIFF HEREBY DEMANDS TRIAL BY JURY.

11 DATED: May 16, 2007

12
13 WINER, McKENNA & DAVIS, LLP

14
15 By: 

16 EMILE A. DAVIS,
17 Attorneys for Plaintiff,
18 PAUL GORDON
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